

### Remarks

In the application, claims 15 through 18, 25 through 27, and 29 through 51 are presently pending. No claims have been allowed.

The non-final Office Action dated October 27, 2009, has been carefully considered. Claims 15 through 18, 25 through 27, and 29 through 51 are rejected under 35 U.S.C. §103(a) as obvious in light of U.S. Patents 6,757,270 (“Kumar”) and 6,771,621 (“Lee”).

### The §103(a) Rejection

The Applicant respectfully submits that the combination of Kumar and Lee does not teach every element of the presently pending claims.

First, the mobile station in Kumar sends pilot strength measurement messages, but Kumar’s mobile station does not send an indication that it intends to switch from the current serving cell to a target cell. One section of Kumar cited against this element of the presently pending claims says instead:

In particular, the mobile transmits a pilot strength measurement message (PSMM), which causes *the primary to transmit a packet data handoff request (PDHOREQ) message* to the new base station being added to the reverse-link active set (i.e., the new secondary base station).

(Kumar, column 15, lines 19 through 23. Emphasis added.) Also, the messages passed in Kumar’s Figures 5b and 9 do not include a message indicating the mobile station’s intention to switch. Thus, in Kumar the primary base station sends the handoff request rather than the mobile station sending a handoff indication, as in the presently pending claims. Because this was the same issue and the same art overcome in the Appeal, the Applicant wonders why this same argument is asserted again. All of the presently pending independent claims include an element wherein the mobile station sends an indication (or, on the other side, wherein the base station receives the indication) that the mobile station intends to switch cells. Because the cited art does not teach this element, the Applicant submits that the presently pending independent claims are patentable over the cited art.

Second, the presently pending claim 1 recites:

*sending an indication to the MS* that the target cell is presently unavailable to provide data transmission service to the MS via the forward link of the target cell.

(Emphasis added.) The art cited against this is Lee, Figures 1 and 2, Abstract, column 1, lines 55 through 67, and column 2, line 56, through column 3, line 27. However, none of these sections of Lee discusses the *mobile station*, they all discuss messages between a base station and a *mobile switching center*. The base station and mobile switching center are well known elements in the infrastructure supporting mobile telephony, but neither one is a *mobile station*. Therefore, this element is not taught by the cited art. All of the presently pending independent claims include an element wherein the base station sends an indication (or, on the other side, wherein the mobile station receives the indication) that the requested target cell is presently unavailable. Because the cited art does not teach this element, the Applicant submits that the presently pending independent claims are patentable over the cited art.

The pending dependent claims include by reference all of the limitations of their antecedent independent claims and so are patentable for at least the same reasons as given above.

### **Conclusion**

This application is considered to be in good and proper form for allowance, and the Applicant requests that the Examiner pass this application on to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is invited to call the Applicant's representative at the number given below.

Please charge any fees that may be due to Deposit Account 502117, Motorola, Inc.

Serial Number: 10/728,052

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